

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Laura Strauss	Team: Squad #5	CCRB Case #: 202202884	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 08/06/2021 1:33 AM	Location of Incident: 60th Precinct stationhouse	Precinct: 60	18 Mo. SOL 2/6/2023	EO SOL 2/6/2023	
Date/Time CV Reported Wed, 10/13/2021 11:26 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 05/05/2022 5:43 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Alberto Rodriguez	10654	953328	060 PCT
2. PO Alan Lee	12637	961881	060 PCT
3. PO Daniel Defrancesco	03876	964479	060 PCT
4. PO Matthew Cardieri	26950	966981	060 PCT
5. SGT Jose Holguin	05495	935027	060 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Robert Mcnamara	05103	945814	060 PCT
2. PO Shantel Creary	26711	967020	060 PCT
3. PO Sukhmani Singh	06955	967694	060 PCT

Officer(s)	Allegation	Investigator Recommendation
A. PO Alan Lee	Force: Police Officer Alan Lee used physical force against § 87(2)(b)	
B. PO Alan Lee	Discourtesy: Police Officer Alan Lee spoke discourteously to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	

Case Summary

On October 13, 2021, Aaron Nottage of the Law Enforcement Accountability Bureau at the Kings County DA's Office reported this complaint to IAB, on behalf of § 87(2)(b). On May 5, 2022, the CCRB received this complaint from IAB, under original log § 87(2)(b). The IAB referral was not sent to the CCRB until May 2022 due to an error made by IAB. The Statute of Limitations for this incident elapsed on February 6, 2023.

On August 6, 2021, § 87(2)(b) was arrested and brought to the 60th Precinct stationhouse in Brooklyn. At approximately 1:33 a.m., § 87(2)(b) kicked PO Alan Lee, then assigned to the 60th Precinct, while they were in front of the command desk. PO Lee used knee strikes, hand strikes, and foot strikes against § 87(2)(b) while he was handcuffed (**Allegation A: Force**, § 87(2)(g)). PO Lee asked § 87(2)(b) "What the fuck are you doing, bro?" (**Allegation B: Discourtesy**,

§ 87(2)(g). § 87(2)(g), § 87(4-b) § 87(2) § 87(2)(g), § 87(4-b)
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The investigation obtained four redacted BWC videos (BR 02-05), all of which are summarized at (BR 06). The NYPD refused to provide all the BWC footage related to this incident because § 87(2)(b)'s arrest had been sealed and the investigation could not obtain a verbal waiver or signed unsealing order from § 87(2)(b). The complaint reached the CCRB at such a late date that it was not possible to obtain stationhouse CCTV footage. All references to video evidence below refer to the time stamp in the video player, and not to any on-screen clock embedded in the footage itself.

Group 54 conducted a concurrent investigation and substantiated the following allegations against PO Lee: use of excessive or improper force against a handcuffed prisoner, use of prohibited act in PG 221-01 (force guidelines), failure to notify a supervisor about use of force, inaccurate TRI Report, and incomplete memo book entry. The remainder of his allegations were closed as "information and intelligence." Charges and Specifications were issued against PO Lee. § 87(2)(g)

§ 87(2)(g)
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PO Lee has since been reassigned to the 83rd Precinct. Sergeant Robert McNamara has since been reassigned to the 75th Precinct. PO Sukhmani Singh has since been reassigned to the 66th Precinct.

This investigation was delayed significantly by a variety of factors, including extended attempts to obtain cooperation from § 87(2)(b), delays in obtaining BWC footage, the extended period in which the Brooklyn DA's office considered whether to press criminal charges against PO Lee, and the NYPD taking more than three months to provide the audio recording of PO Lee's interview with IAB investigators.

Findings and Recommendations

Allegation (A) Force: Police Officer Alan Lee used physical force against § 87(2)(b)

After extensive contact attempts, including meeting him and his lawyer in person after a court appearance, § 87(2)(b) declined to provide a statement to the investigation and refused to sign unsealing orders or HIPAA forms. IAB briefly interviewed § 87(2)(b) (BR 08), who testified that he and his friends had been drinking vodka and that he did not remember exactly what happened. § 87(2)(b) recounted that a police officer “punched [him] a little bit” but not too much. He stated that it was a “typical situation” and that he did not have a complaint against the police because it was not very serious.

As discussed above, the investigation obtained four BWC videos, which the NYPD redacted because the investigation could not get signed unsealing orders. Notably, § 87(2)(b)'s face was redacted, which resulted in video footage that often does not have a clear view of the physical struggle.

The collective BWC footage shows that officers bring § 87(2)(b) in front of the stationhouse desk. He is rear cuffed, and officers are holding him by the arms. PO Lee, PO Rodriguez, PO DeFrancesco, and PO Cardieri are processing the three arrests. § 87(2)(b) who is handcuffed, begins yelling and asking why he is there. § 87(2)(b) curses repeatedly, including calling the officers “faggot[s]” and “motherfucker[s],” and he says, “Suck my dick, nigger.” PO Cardieri’s BWC footage (BR 02, at 26:50) shows that § 87(2)(b) leans backward and outstretches his leg in a kicking motion toward PO Lee, who is standing approximately three or four feet away. § 87(2)(b)'s foot is positioned around PO Lee’s buttocks area, but it is unclear where or whether he makes physical contact with him. PO Cardieri is holding § 87(2)(b)'s left arm at this point. PO Lee immediately turns around and approaches § 87(2)(b) and a struggle ensues. Prior to this point, officers searched § 87(2)(b) and emptied his pockets.

PO Rodriguez BWC’s footage (BR 03, at 26:50) shows that PO Lee, PO DeFrancesco, and PO Cardieri grab § 87(2)(b)'s arms and legs. At 26:52, PO Lee lifts his right knee and appears to strike § 87(2)(b) with his knee. PO DeFrancesco and PO Cardieri hold § 87(2)(b)'s arms as he is bent over. At 26:54, PO Lee appears to punch § 87(2)(b) (alternate angle can be viewed in BR 02, at 26:55). It is unclear how many times he punches § 87(2)(b) or where the punches land. In PO Lee’s BWC footage, three consecutive thudding noises are audible at this exact point (BR 04, at 18:16). Immediately after PO Lee’s hand strikes, § 87(2)(b) ends up on the ground in a seated position, with his legs outstretched in front of him. PO DeFrancesco holds § 87(2)(b)'s arm, while PO Cardieri also attempts to hold onto § 87(2)(b)'s arm but is occupied with a different arrestee. The footage does not show how § 87(2)(b) ends up on the ground, but it appears to have been from a combination of PO Lee’s hand strikes and the momentum from the officers who are holding his arms (BR 04, at 18:17).

In PO Cardieri’s BWC footage (BR 02, at 26:58), PO Lee kicks § 87(2)(b) (alternate angle can be viewed in BR 03, at 26:58). The collective BWC footage makes it evident that § 87(2)(b) is on the ground at this point. It is not visible where PO Lee’s foot makes contact, but a thudding noise is audible. At 27:00, it appears that PO Lee punches § 87(2)(b) while he is on the ground (alternative angles in BR 03, at 26:59; BR 04, at 18:20). It is not visible where PO Lee makes physical contact, but a thudding noise is audible. At 27:01, PO Singh outstretches his right arm and appears to hold PO Lee back. It is difficult to discern § 87(2)(b)'s exact movements throughout this timeframe, but he does not hit or strike any other officers and does not make any sudden or substantial movements.

At most, § 87(2)(b) physically winces and pulls away as PO Lee strikes him. There appear to be at least seven to ten officers present in the general vicinity during the incident.

PO Lee, who was interviewed one year and six months after incident, testified (BR 09) that § 87(2)(b) seemed intoxicated and was “acting out” while he was in front of the desk, insofar as his breath smelled like alcohol, he was yelling and using obscene language, and he was shifting his body around. § 87(2)(b) kicked PO Lee’s lower back as he was filling out paperwork, which caused him slight pain. PO Lee turned around and saw that § 87(2)(b) was moving around. PO Lee then immediately used multiple hand strikes against § 87(2)(b). PO Lee did not recall what part of § 87(2)(b)’s body he struck. PO Lee did not see § 87(2)(b) use force against any other officer at any point. PO Lee used hand strikes to gain compliance because § 87(2)(b) had struck him and was moving around, and PO Lee did not know what § 87(2)(b) was trying to do. In trying to gain compliance, PO Lee was hoping to stop § 87(2)(b) from assaulting anyone else. PO Lee assumed that the other officers around § 87(2)(b) were trying to restrain him, but he did not specifically recall what they were doing. After PO Lee’s hand strikes, § 87(2)(b) was still moving around, though PO Lee could not describe what he was doing. PO Lee then used a foot strike to § 87(2)(b)’s upper body, which he described as a “normal kick.” PO Lee used a foot strike because § 87(2)(b) was still trying to move forward and PO Lee was trying to gain compliance.

§ 87(2)(b) eventually ended up on the ground, though PO Lee did not recall how he ended up on the ground or how he was positioned. PO Lee did not recall whether his hand strikes or foot strike caused § 87(2)(b) to go to the ground. PO Lee walked away once § 87(2)(b) was on the ground because he had been subdued. To PO Lee’s recollection, he did not use any force against § 87(2)(b) when he was on the ground. PO Lee did not recall observing any physical injuries on § 87(2)(b). Upon watching BWC footage, PO Lee acknowledged that he also used a knee strike against § 87(2)(b). PO Lee explained that it was for the same reason, as he was trying to stop § 87(2)(b) and get him to the ground. PO Lee also explained that it appeared in the footage that he used force against § 87(2)(b) while he was “on his way” to the ground, and that he was still trying to subdue § 87(2)(b) at that point because he was moving around. PO Lee considered all the force that he used to be necessary and not excessive.

PO Lee’s testimony in his IAB interview, conducted on June 9, 2022, was mostly consistent with his CCRB interview (BR 10-11). PO Lee testified that he attempted to subdue § 87(2)(b) in order to prevent any other injuries to anyone else. PO Lee initially only recalled taking § 87(2)(b) to the ground and did not recall specifically what he did because so much time had elapsed since the incident. Upon watching BWC footage, PO Lee acknowledged kneeling § 87(2)(b) and using hand strikes against him, which he did because § 87(2)(b) was still struggling and the other officers were still trying to restrain him. PO Lee used force against § 87(2)(b) while he was on the ground because he thought that § 87(2)(b) was still a danger to himself and the other officers. PO Lee did not know what § 87(2)(b)’s intentions were and just knew that he was “aggressive.”

A Medical Treatment of Prisoner Report (BR 12) noted that § 87(2)(b) was forcibly brought to the ground after kicking an officer in the back. § 87(2)(b) sustained a minor abrasion and bruising to the face.

The IAB Log (BR 13) noted that IAB reviewed PO Rodriguez’s BWC footage and saw that § 87(2)(b) appeared to be bleeding from his forehead upon being escorted to the holding cells. This is not visible in the BWC footage obtained by the CCRB due to § 87(2)(b)’s face being redacted.

The TRI Reports (BR 14) detailed that the only force used by PO Lee and PO Defrancesco was wrestling/grappling and a forcible takedown, in order to overcome resistance or aggression, in

defense of other MOS, in defense of self, and due to a fleeing suspect. The narrative section stated that § 87(2)(b) was acting aggressive and irate as officers were processing his arrest. Alcohol intoxication was suspected. The TRI Report did not detail that PO Lee used any hand strikes, foot strikes, or knee strikes against § 87(2)(b) nor did it detail that § 87(2)(b) sustained any physical injuries § 87(2)(g), § 87(4-b)

Officers may use force when it is reasonable to place a person in custody, to ensure the safety of themselves, and to protect other officers. Any use of force must be reasonable under the circumstances and not excessive. In determining whether the use of force is reasonable, relevant factors include the nature and severity of the crime, the actions taken by the subject, the immediacy of the perceived threat or harm to officers, whether the subject is actively resisting custody, and whether the subject is attempting to evade arrest by flight. Officers shall not use any level of force on handcuffed subjects unless necessary to prevent injury, escape, or to overcome active physical resistance or assault. Patrol Guide Procedure 221-01 (BR 15).

Though § 87(2)(b) at most, kicked PO Lee's lower back or buttocks from approximately three or four feet away, at least seven other officers were present, he was rear handcuffed in the stationhouse, he had not been arrested for a violent crime, he had already been searched for weapons, he was not attempting to escape, and he did not strike or hit any other officers. While officers may have been justified in taking § 87(2)(b) to the ground or using some level of force to restrain his legs, PO Lee escalated the situation by repeatedly punching, kicking, and kneeling § 87(2)(b) while he was handcuffed, including after he ended up on the ground. § 87(2)(g)

Allegation (B) Discourtesy: Police Officer Alan Lee spoke discourteously to § 87(2)(b)

In PO Lee's BWC footage (BR 04, at 18:21), immediately after PO Lee punches § 87(2)(b) for the final time, PO Lee says, "Fuck are you doing bro?" At 18:29, PO Lee asks § 87(2)(b) again, "What the fuck are you doing bro?" At this point, § 87(2)(b) is handcuffed and is on the ground after having struggled with the officers as described above.

§ 87(2)(b) did not recount that PO Lee used profanity toward him during his IAB interview.

PO Lee testified that he did not recall using any profanity against § 87(2)(b). Upon watching his BWC footage, he acknowledged stating, "What the fuck are you doing bro?" to § 87(2)(b). PO Lee did not recall why he made that statement.

IAB did not question PO Lee about the use of profanity and he did not provide any testimony to them about that issue.

The NYPD is committed to accomplishing its mission of protecting the lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect. Officers must "maintain a higher standard of integrity than is generally expected of others." Patrol Guide Procedure 200-02 (BR 16). The NYPD's disciplinary decisions "have consistently held that when a police officer uses an otherwise impolite word during a stressful street encounter where that officer is attempting to maintain control of the situation, the police officer's verbal slip does not rise to the level of actionable misconduct." NYPD Disciplinary Case No. 76927/04 (2004) (BR 17).

PO Lee made an unprofessional remark to § 87(2)(b) § 87(2)(g), as § 87(2)(b) was on the ground and restrained, and the situation was already under control. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 18).
- PO Lee has been a member of the NYPD for six years and has been a subject in three CCRB complaints and six allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of November 9, 2022, the NYC Comptroller's Office has no record of a Notice of Claim being filed regarding this complaint (BR 19).

§ 87(2)(b)

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§ 87(2)(b)

Squad: 5

Investigator: Laura Strauss SI Laura Strauss March 21, 2023
Signature Print Title & Name Date

Squad Leader: Daniel Giansante IM Daniel Giansante March 22, 2023
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date